

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA No.277/1995

Decided on.16.5.2007

Tek Chand and another

...Appellants.

Versus

Shakuntla Devi and others.

...Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?¹. No

For the appellants : Mr. K.D. Sood, Advocate

For the respondents Mr. Bhupender Gupta, Sr. Advocate with Mr. Janesh Gupta, Advocate for respondent No.1.

Rajiv Sharma, J.

The present second appeal has been directed against the judgment and decree dated 7.4.1995, passed by the Additional District Judge, Kullu in Civil Appeal No. 64 of 1993.

The brief facts necessary for the adjudication of this second appeal are that the appellants-plaintiffs (hereinafter referred to as the plaintiffs for convenience sake) had brought the suit against the defendants for declaration and in the alternative for possession of the suit land. It has been alleged by the plaintiffs in the plaint that the suit land was inherited by Smt. Begmu from her mother Smt. Nomu. The plaintiffs are the sisters of Smt. Begmu and had claimed that after her death, the plaintiffs being her sisters became owners by way of inheritance. Smt. Begmu died on 29.7.1967 and mutation of inheritance was attested in the name of Bhola Ram being her husband. According to the plaintiffs, Bhola Ram admitted

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?* No.

the claim of the plaintiffs and gifted the suit land in favour of the plaintiffs and on account of that gift deed dated 26.11.1968, the plaintiffs became owners in possession of the suit land. The plaintiffs had also prayed in the alternative that in case the gift deed in favour of Bhola Ram by the plaintiffs is not valid, the plaintiffs being the heirs of Smt. Begmu inherited the suit land and had become owners by way of adverse possession.

The defendants had contested the suit filed by the plaintiffs. It was stated in the written statement that the defendant No.2, Bhola Ram was not the husband of Begmu and the defendant No.1 was the husband of deceased Begmu and as such he was entitled to inherit the suit land as her heir.

On the pleadings of the parties, the following issues were framed by the trial court on 21.7.1975:

1. **Whether the plaintiffs are owners in possession of the suit land?** **OPP.**
2. **Whether the plaintiffs are entitled to the relief of injunction as prayed for?** **OPP.**
3. **Whether the plaintiffs are the preferential heirs of Smt. Begmu?** **OPP**
4. **Whether the plaintiffs are the owners of the suit land on the basis of the gift deed dated 26.11.1968 executed by Sh. Bhola Ram defendant No.2?** **OPP.**
5. **Whether the suit is not maintainable in the present form?** **OPD.**
6. **Whether the gift deed in suit was speculative and binding on the defendants?** **OPD.**
7. **Whether the gift deed in question is the result of fraud?** **OPD-2.**
8. **Whether Shri Manu defendant is the husband of Smt. Begmu deceased and thus is preferential heir to succeed Smt. Begmu?** **OPP.**
9. **Relief**

The case was decided by the trial court on 7.12.1979 in favour of the plaintiffs. The defendant preferred an appeal against the judgment and decree dated 7.12.1979 in the court of District Judge, Mandi. The District Judge, Mandi dismissed the appeal on 3.3.1981. The second appeal was preferred in this Court. This Court vide order dated 2.4.1991 held that the trial court as well as first appellate court had not given findings on issues No.4 to 8 and as such the controversy between the parties as to who was the husband of Smt. Begmu remained undecided. This Court had directed the trial court to give its findings on issues No.4 to 8. The trial court had given the findings on issues No. 4 to 8 in its judgment dated 30.9.1993 as under:

Issue No.4	No.
Issue No.5	Yes.
Issue No.6	Yes.
Issue No.7	No.
Issue No.8	Yes.
Issue No.9	Suit of the plaintiff is dismissed as per operative portion of judgment.

The trial court had dismissed the suit on 30th September, 1993. Feeling aggrieved by the judgment and decree passed by the trial court dated 30.9.1993, the plaintiffs had filed the appeal in the court of Additional District Judge, Kullu on 8.11.1993.

The Additional District Judge, Kullu had framed the following points for determination:

Point No.1	Whether Smt. Begmu was the legally wedded wife of the deceased Manu alias Man Dass or of the deceased Bhole Ram?
Point No.2.	Whether the plaintiffs-appellants are owners of the suit property by virtue of the gift deed Ex.PW-1/A as claimed?

Point No.3 Whether the suit is maintainable and the plaintiffs-appellants are entitled to the reliefs sought for?

Point No.4. Final order.

The Additional District Judge had recorded the following findings on the above points:

Point No.1 Legally wedded wife of Manu alias Man Dass..

Point No.2 No.

Point No.3 No.

Point No.4 The appeal is dismissed as per operative portion of the judgment.

The Additional District Judge, Kullu had dismissed the appeal on 7.4.1995.

The plaintiff Premi had died on 10.10.1999 during the pendency of the second appeal and her legal representatives were brought on record vide order dated 14.3.2003. The Court had admitted the second appeal on the following substantial question of law:

- 1. Whether in the absence of custom as per clause 16 of the Rawaj-e-Am of Kullu being pleaded and proved and fact of divorce between Begmu and Bhole Ram being substantiated presumption of her subsequent marriage could be raised?**
- 2. Whether on proper construction of gift deed PW-1/A and marriage deed PAA Bhole Ram was competent to execute the gift deed?**
- 3. Whether in view of the fact that the property was ancestral and plaintiff being preferential heir was entitled to inherit the property?**
- 4. Whether the Court below has failed to raise legal inferences from the facts proved on record?**
- 5. Whether the evidence relied upon was inadmissible in view of provisions of section 50 of the Evidence Act and**

findings of the court below are not legally sustainable being based on misconstruction and misreading of oral and documentary evidence?

Since all these questions are inter-connected, therefore, can be conveniently discussed together.

Mr. K.D. Sood, Advocate had strenuously argued that the judgment and decree passed by the appellate court on 7.4.1995 and dated 30.9.1993 of the trial court are not sustainable in the eyes of law.

Mr. Bhupender Gupta, Sr. Advocate had supported the judgments and decrees passed by the trial court as well as by the appellate court.

I have heard the learned counsel for the parties and perused the record.

The controversy between the parties is whether deceased Begmu was the wife of Bhola Ram or Manu alias Man Dass at the time of her death. The plaintiffs had placed on record the marriage deed Ex.P-8 dated 3rd July, 1930. Mr. Bhola Ram was examined as DW-4. He had admitted in his statement that Smt. Begmu was married to him on July 3, 1930, but he thereafter divorced Smt. Begmu and then she got married to Manu alias Man Dass in the year 1950. The marriage of Smt. Begmu with Manu alias Man Dass was performed vide marriage deed Ex.D-1 and Ex.D-2 scribed by DW-1 Sewat Ram at the instance of Manu alias Man Dass and Smt. Begmu on June 23, 1950. In Ex. D1 and D-2, Smt. Begmu has been described as divorcee of one Motu resident of Parsha, Kothi Nagar, Tehsil and District Kullu in the year 1950.

It appears that after she got the divorce from Bhola Ram, she was married to Shri Motu and thereafter after obtaining divorce from Motu she married Manu alias Man Dass. Smt. Begmu and Manu alias Man Dass had been living as husband and wife and her name was entered in the voter list in the year 1958. In the gift deed, Smt. Begmu has been

described as wife of Manu. Sh. Tek Ram while appearing as PW-3 admitted in his cross-examination that Smt. Begmu and Manu had been residing together. DW-2 Ram Dayal had also described that Smt. Begmu was married to Manu about 30-32 years back.

Smt. Begmu was the wife of Manu alias Man Dass at the time of her death and he was entitled to inherit the suit property under section 15 (1) of the Hindu Succession Act, 1956. The appellate court had come to the right conclusion that gift deed Ex.PW-1 could not be given any credence since Bhola Ram could not have inherited the suit property because it vested in her husband Manu alias Man Dass. There is no substantial question of law involved in the second appeal. The findings recorded by the courts below need not be interfered by the Court.

Accordingly this second appeal is dismissed with no order as to costs.

(Rajiv Sharma), Judge

16.5.2007
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